

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: NAVIDEA BIOPHARMACEUTICALS
LITIGATION

Case No: 1:19-cv-01578-VEC-VF

ORAL ARGUMENT REQUESTED

NOTICE OF MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Barry M. Kazan, Esq., Local Rule 56.1 Statement Material Facts, Memorandum of Law, and upon all pleadings and proceedings previously had herein, the undersigned counsel for Plaintiff/Counterclaim-Defendant Navidea Biopharmaceuticals, Inc. (“Navidea”) and Third-Party Defendant Macrophage Therapeutics, Inc. (“Macrophage”) will move this Court before the Honorable Valerie E. Caproni at the United States Courthouse, 40 Foley Square, Courtroom 443, New York, New York 10007-1312, at a time and date to be set by the Court, for an Order, under Rule 56 of the Federal Rules of Civil Procedure, granting Navidea and Macrophage’s motion for summary judgment (1) dismissing Defendant/Counterclaim Plaintiff and Third-Party Plaintiff Dr. Michael M. Goldberg, M.D.’s (“Dr. Goldberg”) counterclaim against Navidea for breach of contract; (2) dismissing Dr. Goldberg’s third-party claim against Macrophage for breach of contract; (3) finding for Navidea on its claim against Dr. Goldberg for breach of contract; (4) finding for Navidea on its claim against Dr. Goldberg for breach of the implied covenant of good faith and fair dealing; (5) granting Navidea a declaratory judgment that Navidea is entitled to terminate the August Agreement and has no further obligations under that contract; and for such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that any opposing affidavits and answering memoranda of law must be served on or before June 29, 2023, and any reply affidavits and memoranda of law must be served on or before July 20, 2023.

Date: June 1, 2023
New York, New York

Respectfully submitted,

/s/ Barry M. Kazan
Barry M. Kazan, Esq.
Timothy J. Quill, Jr., Esq.
Mintz & Gold LLP
600 Third Avenue, 25th Floor
New York, New York 10016
Phone: (212) 696-4848
Fax: (212) 696-1231
kazan@mintzandgold.com
quill@mintzandgold.com

*Attorneys for Plaintiff/Counterclaim-Defendant
Navidea Biopharmaceuticals, Inc. and
Third-Party Defendant Macrophage
Therapeutics, Inc.*

TO (via ECF):

Gregory Zimmer, Esq.
142 New Chalet Drive
Mohegan Lake, NY 10547
(914) 402-5683
GZimmer@GZimmerLegal.com

*Attorneys for Defendant/Counterclaim-Plaintiff
and Third-Party Plaintiff Dr. Michael M. Goldberg, M.D.*